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E & R AMENDMENTS TO LB 298

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 "Section 1. Section 66-1510, Revised Statutes
4 Supplement, 2004, is amended to read:

5 66-1510. Petroleum shall mean:

6 (1) For purposes of the fee provisions of section
7 66-1521:

8 (a) Motor vehicle fuel as defined in section 66-482,
9 except natural gasoline used as a denaturant by an ethanol facility
10 as defined in section 66-1333; and

11 ~~(2)~~ (b) Diesel fuel as defined in section 66-482,
12 including kerosene which has been blended for use as a motor fuel;
13 and

14 (2) For purposes of all provisions of the Petroleum
15 Release Remedial Action Act other than the fee provisions of
16 section 66-1521:

17 (a) The fuels defined in subdivision (1) of this section;
18 and

19 (b) A fraction of crude oil that is liquid at a
20 temperature of sixty degrees Fahrenheit and a pressure of fourteen
21 and seven-tenths pounds per square inch absolute, except any such
22 fraction which is regulated as a hazardous substance under section
23 101(14) of the federal Comprehensive Environmental Response,
24 Compensation, and Liability Act of 1980, 42 U.S.C. 9601(14), as

1 such act existed on January 1, 2005.

2 Sec. 2. Sections 2 to 14 of this act may be cited as the
3 Uniform Environmental Covenants Act.

4 Sec. 3. In the Uniform Environmental Covenants Act:

5 (1) Activity and use limitations means restrictions or
6 obligations created under the act with respect to real property.

7 (2) Agency means the Department of Environmental Quality
8 or any other Nebraska or federal agency that determines or approves
9 the environmental response project pursuant to which the
10 environmental covenant is created.

11 (3) Common interest community means a condominium,
12 cooperative, or other real property with respect to which a person,
13 by virtue of the person's ownership of a parcel of real property,
14 is obligated to pay property taxes or insurance premiums, or for
15 maintenance, or improvement of other real property described in a
16 recorded covenant that creates the common interest community.

17 (4) Environmental covenant means a servitude arising
18 under an environmental response project that imposes activity and
19 use limitations.

20 (5) Environmental response project means a plan or work
21 performed for environmental remediation of real property and
22 conducted:

23 (A) Under a federal or state program governing
24 environmental remediation of real property, including the Petroleum
25 Release Remedial Action Act;

26 (B) Incident to closure of a solid or hazardous waste
27 management unit, if the closure is conducted with approval of an

1 agency; or

2 (C) Under a state voluntary cleanup program authorized by
3 the Remedial Action Plan Monitoring Act.

4 (6) Holder means the grantee of an environmental covenant
5 as specified in subsection (a) of section 4 of this act.

6 (7) Person means an individual, corporation, business
7 trust, estate, trust, partnership, limited liability company,
8 association, joint venture, public corporation, government,
9 governmental subdivision, agency, or instrumentality, or any other
10 legal or commercial entity.

11 (8) Record, used as a noun, means information that is
12 inscribed on a tangible medium or that is stored in an electronic
13 or other medium and is retrievable in perceivable form.

14 (9) State means a state of the United States, the
15 District of Columbia, Puerto Rico, the United States Virgin
16 Islands, or any territory or insular possession subject to the
17 jurisdiction of the United States.

18 Sec. 4. (a) Any person, including a person that owns an
19 interest in the real property, may be a holder, except that the
20 State of Nebraska, a municipality, or another unit of local
21 government may not be a holder unless it is the owner of the real
22 property. An environmental covenant may identify more than one
23 holder. The interest of a holder is an interest in real property.

24 (b) A right of an agency under the Uniform Environmental
25 Covenants Act or under an environmental covenant, other than a
26 right as a holder, is not an interest in real property.

27 (c) An agency is only bound by any obligation it

1 expressly assumes in an environmental covenant, but an agency does
2 not assume obligations merely by signing an environmental covenant.
3 Any other person that signs an environmental covenant is bound by
4 the obligations the person assumes in the covenant, but signing the
5 covenant does not change obligations, rights, or protections
6 granted or imposed under law other than the act except as provided
7 in the covenant.

8 (d) The following rules apply to interests in real
9 property in existence at the time an environmental covenant is
10 created or amended:

11 (1) A prior interest is not affected by an environmental
12 covenant unless the person that owns the interest subordinates that
13 interest to the covenant.

14 (2) The act does not require a person that owns a prior
15 interest to subordinate that interest to an environmental covenant
16 or to agree to be bound by the covenant.

17 (3) A subordination agreement may be contained in an
18 environmental covenant covering real property or in a separate
19 record. If the environmental covenant covers commonly owned
20 property in a common interest community, the record may be signed
21 by any person authorized by the governing board of the owners'
22 association.

23 (4) An agreement by a person to subordinate a prior
24 interest to an environmental covenant affects the priority of that
25 person's interest but does not by itself impose any affirmative
26 obligation on the person with respect to the environmental
27 covenant.

- 1 Sec. 5. (a) An environmental covenant must:
- 2 (1) State that the instrument is an environmental
3 covenant executed pursuant to the Uniform Environmental Covenants
4 Act;
- 5 (2) Contain a legally sufficient description of the real
6 property subject to the covenant;
- 7 (3) Describe the activity and use limitations on the real
8 property;
- 9 (4) Identify every holder;
- 10 (5) Be signed by the agency, every holder, and unless
11 waived by the agency every owner of the fee simple of the real
12 property subject to the covenant; and
- 13 (6) Identify the name and location of any administrative
14 record for the environmental response project reflected in the
15 environmental covenant.
- 16 (b) In addition to the information required by subsection
17 (a) of this section, an environmental covenant may contain other
18 information, restrictions, and requirements agreed to by the
19 persons who signed it, including any:
- 20 (1) Requirements for notice following transfer of a
21 specified interest in, or concerning proposed changes in use of,
22 applications for building permits for, or proposals for any site
23 work affecting the contamination on, the property subject to the
24 covenant;
- 25 (2) Requirements for periodic reporting describing
26 compliance with the covenant;
- 27 (3) Rights of access to the property granted in

1 connection with implementation or enforcement of the covenant;

2 (4) A brief narrative description of the contamination
3 and remedy, including the contaminants of concern, the pathways of
4 exposure, limits on exposure, and the location and extent of the
5 contamination;

6 (5) Limitation on amendment or termination of the
7 covenant in addition to those contained in sections 10 and 11 of
8 this act;

9 (6) Rights of the holder in addition to its right to
10 enforce the covenant pursuant to section 12 of this act; and

11 (7) Rights to enforce granted to any person.

12 (c) In addition to other conditions for its approval of
13 an environmental covenant, the agency may require that those
14 persons specified by the agency who have interests in the real
15 property have signed the covenant.

16 Sec. 6. (a) An environmental covenant that complies with
17 the Uniform Environmental Covenants Act runs with the land.

18 (b) An environmental covenant that is otherwise effective
19 is valid and enforceable even if:

20 (1) It is not appurtenant to an interest in real
21 property;

22 (2) It can be or has been assigned to a person other than
23 the original holder;

24 (3) It is not of a character that has been recognized
25 traditionally at common law;

26 (4) It imposes a negative burden;

27 (5) It imposes an affirmative obligation on a person

1 having an interest in the real property or on the holder;

2 (6) The benefit or burden does not touch or concern real
3 property;

4 (7) There is no privity of estate or contract;

5 (8) The holder dies, ceases to exist, resigns, or is
6 replaced; or

7 (9) The owner of an interest subject to the environmental
8 covenant and the holder are the same person.

9 (c) An instrument that creates restrictions or
10 obligations with respect to real property that would qualify as
11 activity and use limitations except for the fact that the
12 instrument was recorded before the operative date of this section
13 is not invalid or unenforceable because of any of the limitations
14 on enforcement of interests described in subsection (b) of this
15 section or because it was identified as an easement, servitude,
16 deed restriction, or other interest. The act does not apply in any
17 other respect to such an instrument.

18 (d) The act does not invalidate or render unenforceable
19 any interest, whether designated as an environmental covenant or
20 other interest, that is otherwise enforceable under the law of this
21 state.

22 Sec. 7. The Uniform Environmental Covenants Act does not
23 authorize a use of real property that is otherwise prohibited by
24 zoning, by law other than the act regulating use of real property,
25 or by a recorded instrument that has priority over the
26 environmental covenant. An environmental covenant may prohibit or
27 restrict uses of real property which are authorized by zoning or by

1 law other than the act.

2 Sec. 8. (a) A copy of an environmental covenant shall be
3 provided by the persons and in the manner required by the agency
4 to:

5 (1) Each person that signed the covenant;

6 (2) Each person holding a recorded interest in the real
7 property subject to the covenant;

8 (3) Each person in possession of the real property
9 subject to the covenant;

10 (4) Each municipality or other unit of local government
11 in which real property subject to the covenant is located; and

12 (5) Any other person the agency requires.

13 (b) The validity of a covenant is not affected by failure
14 to provide a copy of the covenant as required under this section.

15 Sec. 9. (a) An environmental covenant, any amendment or
16 termination of the covenant under section 10 or 11 of this act, and
17 any subordination agreement must be recorded in every county in
18 which any portion of the real property subject to the covenant is
19 located. For purposes of indexing, a holder shall be treated as a
20 grantee.

21 (b) Except as otherwise provided in subsection (c) of
22 section 10 of this act, an environmental covenant is subject to the
23 laws of this state governing recording and priority of interests in
24 real property.

25 (c) A copy of a document recorded under subsection (a) of
26 this section shall also be provided to the Department of
27 Environmental Quality if the department has not signed the

1 covenant.

2 Sec. 10. (a) An environmental covenant is perpetual
3 unless it is:

4 (1) By its terms limited to a specific duration or
5 terminated by the occurrence of a specific event;

6 (2) Terminated by consent pursuant to section 11 of this
7 act;

8 (3) Terminated pursuant to subsection (b) of this
9 section;

10 (4) Terminated by foreclosure of an interest that has
11 priority over the environmental covenant; or

12 (5) Terminated or modified in an eminent domain
13 proceeding, but only if:

14 (A) The agency that signed the covenant is a party to the
15 proceeding;

16 (B) All persons identified in subsections (a) and (b) of
17 section 11 of this act are given notice of the pendency of the
18 proceeding; and

19 (C) The court determines, after hearing, that the
20 termination or modification will not adversely affect human health
21 or the environment.

22 (b) If the agency that signed an environmental covenant
23 has determined that the intended benefits of the covenant can no
24 longer be realized, a court, under the doctrine of changed
25 circumstances, in an action in which all persons identified in
26 subsections (a) and (b) of section 11 of this act have been given
27 notice, may terminate the covenant or reduce its burden on the real

1 property subject to the covenant. The agency's determination or
2 its failure to make a determination upon request is subject to
3 review pursuant to the Administrative Procedure Act.

4 (c) Except as otherwise provided in subsections (a) and
5 (b) of this section, an environmental covenant may not be
6 extinguished, limited, or impaired through issuance of a tax deed,
7 foreclosure of a tax lien, or application of the doctrine of
8 adverse possession, prescription, abandonment, waiver, lack of
9 enforcement, or acquiescence, or a similar doctrine.

10 (d) An environmental covenant may not be extinguished,
11 limited, or impaired by application of sections 57-227 to 57-239,
12 72-301 to 72-314, or 76-288 to 76-298.

13 Sec. 11. (a) An environmental covenant may be amended or
14 terminated by consent only if the amendment or termination is
15 signed by:

16 (1) The agency;

17 (2) Unless waived by the agency, the current owner of the
18 fee simple of the real property subject to the covenant;

19 (3) Each person that originally signed the covenant,
20 unless the person waived in a signed record the right to consent or
21 a court finds that the person no longer exists or cannot be located
22 or identified with the exercise of reasonable diligence; and

23 (4) Except as otherwise provided in subdivision (d) (2) of
24 this section, the holder.

25 (b) If an interest in real property is subject to an
26 environmental covenant, the interest is not affected by an
27 amendment of the covenant unless the current owner of the interest

1 consents to the amendment or has waived in a signed record the
2 right to consent to amendments.

3 (c) Except for an assignment undertaken pursuant to a
4 governmental reorganization, assignment of an environmental
5 covenant to a new holder is an amendment.

6 (d) Except as otherwise provided in an environmental
7 covenant:

8 (1) A holder may not assign its interest without consent
9 of the other parties;

10 (2) A holder may be removed and replaced by agreement of
11 the other parties specified in subsection (a) of this section; and

12 (e) A court of competent jurisdiction may fill a vacancy
13 in the position of holder.

14 Sec. 12. (a) A civil action for injunctive or other
15 equitable relief for violation of an environmental covenant may be
16 maintained by:

17 (1) A party to the covenant;

18 (2) The agency;

19 (3) Any person to whom the covenant expressly grants
20 power to enforce;

21 (4) A person whose interest in the real property or whose
22 collateral or liability may be affected by the alleged violation of
23 the covenant; or

24 (5) A municipality or other unit of local government in
25 which the real property subject to the covenant is located.

26 (b) The Uniform Environmental Covenants Act does not
27 limit the regulatory authority of the agency under law other than

1 the Uniform Environmental Covenants Act with respect to an
2 environmental response project.

3 (c) A person is not responsible for or subject to
4 liability for environmental remediation solely because it has the
5 right to enforce an environmental covenant.

6 (d) The Uniform Environmental Covenants Act does not
7 limit the right of any person to recover damages under any other
8 provision of law.

9 Sec. 13. In applying and construing the Uniform
10 Environmental Covenants Act, consideration must be given to the
11 need to promote uniformity of the law with respect to its subject
12 matter among states that enact it.

13 Sec. 14. The Uniform Environmental Covenants Act
14 modifies, limits, or supersedes the federal Electronic Signatures
15 in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but
16 does not modify, limit, or supersede section 101 of that act, 15
17 U.S.C. 7001(a), or authorize electronic delivery of any of the
18 notices described in section 103 of that act, 15 U.S.C. 7003(b).

19 Sec. 15. Section 76-288, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 76-288. Any person having the legal capacity to own real
22 estate in this state, who has an unbroken chain of title to any
23 interest in real estate by ~~himself~~ such person and his or her
24 immediate or remote grantors under a deed of conveyance which has
25 been recorded for a period of twenty-two years or longer, and is in
26 possession of such real estate, shall be deemed to have a
27 marketable record title to such interest, subject only to such

1 claims thereto and defects of title as are not extinguished or
2 barred by the application of the ~~provisions of~~ Uniform
3 Environmental Covenants Act and sections 25-207, 25-213, 40-104,
4 and 76-288 to 76-298, instruments which have been recorded less
5 than twenty-two years, and any encumbrances of record not barred by
6 the statute of limitations.

7 Sec. 16. Sections 1 and 18 of this act become operative
8 on January 1, 2005. Sections 2 to 15 and 19 of this act become
9 operative three calendar months after adjournment of this
10 legislative session. The other sections of this act become
11 operative on their effective date.

12 Sec. 17. If any section in this act or any part of any
13 section is declared invalid or unconstitutional, the declaration
14 shall not affect the validity or constitutionality of the remaining
15 portions.

16 Sec. 18. Original section 66-1510, Revised Statutes
17 Supplement, 2004, is repealed.

18 Sec. 19. Original section 76-288, Reissue Revised
19 Statutes of Nebraska, is repealed.

20 Sec. 20. Since an emergency exists, this act takes
21 effect when passed and approved according to law."

22 2. On page 1, strike beginning with "the" in line 1
23 through line 5 and insert "environmental remediation; to amend
24 section 76-288, Reissue Revised Statutes of Nebraska, and section
25 66-1510, Revised Statutes Supplement, 2004; to redefine a term
26 under the Petroleum Release Remedial Action Act; to adopt the
27 Uniform Environmental Covenants Act; to harmonize provisions; to

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- 1 provide operative dates; to provide severability; to repeal the
- 2 original sections; and to declare an emergency.".